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No. 82-1459

In the Supreme Court of the United States

OCTOBER TERM, 1982

JEREMIAH P. BUCKLEY, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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Petitioners contend that the court of appeals erred in reversing an order dismissing an indictment on the ground that it did not adequately charge the offense of mail fraud.

In January 1981, petitioners were charged in an indictment returned in the United States District Court for the Western District of Washington with mail fraud, in violation of 18 U.S.C. 1341. In brief, the indictment (Pet. App. D1-D19) charged that petitioners devised a money-washing scheme that operated from 1972 to 1976, in part to avoid a state law requiring disclosure of contributions to state legislators; that petitioner Buckley distributed money on behalf of petitioner Washington Water Power Company; that petitioner Buckley filed reports that intentionally failed to disclose the money paid to him which he subsequently distributed to members of the state legislature; and that the

petitioners, for the purpose of executing the scheme, "knowingly caused to be delivered by mail * * * an envelope addressed to the 'Public Disclosure Commission * * *' containing Public Disclosure Commission Form L-3 * * * " (Pet. App. D 19).

On August 21, 1981, the district court dismissed the mail fraud charge on the ground that the indictment and bill of particulars established that the government could not prove any falsity on Form L-3 because of the absence of explicit allegations that Buckley made payments to state legislators and intentionally omitted them from the Form L-3 (Pet. App. C1-C8). The court of appeals reversed. It concluded that the indictment was clear enough to give petitioners notice of the crime charged and to allow them to plead double jeopardy because it implicitly alleged the falsity of the disclosure report (Pet. App. A1-A28).

Petitioners contend (Pet. 9-24) that the indictment does not adequately charge a scheme to defraud because it does not explicitly allege that the mailing was false. Whatever the merits of petitioners' contentions, they are not presently ripe for review by this Court.[1] The court of appeals' decision places petitioners in precisely the same position they would have occupied if the district court had denied their motion to dismiss. If petitioners are acquitted following a trial on the merits, their contentions will be moot. If, on the other hand, petitioners are convicted and their conviction is affirmed on appeal, they will then be able to present their contentions to this Court, together with any other claims they may have, in a petition for a writ of certiorari seeking

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[1] It is now more than two years since the indictment was returned and more than a year and a half since the district court's dismissal order. Further interlocutory review at this time would cause serious additional delay in trial of the charges against petitioners.

review of a final judgment against them. Accordingly, review by this Court of the court of appeals' decision would be premature at this time.[2]

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

REX E. LEE
Solicitor General

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[2]Because this case is interlocutory, we are not responding on the merits to the question presented by the petition. We will file a response on the merits if the Court requests.

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